

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

VITALIY TSISYK

Plaintiff,

Case No. 07-13986

v.

Hon. John Corbett O'Meara

DEPARTMENT OF HOMELAND SECURITY,
DISTRICT DIRECTOR, Detroit Director of the
U.S. Citizenship and Immigration Service, and the
FEDERAL BUREAU OF INVESTIGATION,
National Name Check Program,
Defendants,

**ORDER GRANTING DEFENDANTS' MOTION TO DISMISS FOR MOOTNESS AND
DISMISSING PLAINTIFF'S MOTION FOR ATTORNEY FEES AND COSTS**

Before the court are Defendants' motion to dismiss on the basis of mootness, pursuant to Fed. R. Civ. P. 12(b)(1), and Plaintiff's motion for attorney fees and costs. The matter is fully briefed and the court will rule based on the record. For the reasons explained below, the court GRANTS Defendants' motion and DENIES Plaintiff's motion for attorney fees and costs.

Plaintiff filed this complaint on September 20, 2007 in protest to the time that his naturalization application had been pending with the United States Citizenship and Immigration Service. On June 24, 2008, Plaintiff's application was granted and on July 21, 2008, he was sworn in as a United States citizen. "Simply stated, a case is moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." Powell v. McCormack, 395 U.S. 486, 496 (1969). There no longer exists an issue. Therefore, the court GRANTS Defendants' motion to dismiss.

In regards to Plaintiff's motion for attorney fees, the court finds nothing frivolous in the government's litigation of this case. The government's motions in this matter concern unsettled law in the Sixth Circuit and the issues were certainly arguable. Underlying this litigation is the almost four year delay in Plaintiff's citizenship application. The delay is indeed regrettable but

it is not a reason for granting attorney fees and costs. Therefore, the court DENIES Plaintiff's motion for attorney fees and costs.

SO ORDERED.

s/John Corbett O'Meara
United States District Judge

Date: September 24, 2008

I hereby certify that a copy of the foregoing document was served upon the parties of record on this date, September 24, 2008, by electronic and/or ordinary mail.

s/William Barkholz
Case Manager